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LEGAL STATUS

LEGAL STATUS

# VA Veteran-Owned Small Business (VOSB) Verification Guidelines

A Proposed Rule by the Veterans Affairs Department on 01/10/2018

 This document has a comment period that ends in 49 days. (03/12/2018)

[Read the 6 public comments](#)

DOCUMENT DETAILS

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ENHANCED CONTENT

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Docket Number:

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**Docket Name:**

AP97- Proposed Rule - VA Veteran-Owned Small Business (VOSB) Verification Guidelines

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AP97(P) Impact Analysis (9-8-17 jm f) Small Business... (<https://www.regulations.gov/document?D=VA-2018-VACO-0004-0002>)

ENHANCED CONTENT

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PUBLISHED DOCUMENT

**AGENCY:**

Department of Veterans Affairs.

**ACTION:**

Proposed rule.

**SUMMARY:**

The Department of Veterans Affairs (VA) is proposing to amend its regulations governing VA's Veteran-Owned Small Business (VOSB) Verification Program. The National Defense Authorization Act for Fiscal Year 2017 ("the NDAA"), Public Law 114-840 (<https://api.fdsys.gov/link?collection=plaw&congress=114&lawtype=public&lawnum=840&link-type=html>), placed the responsibility for issuing regulations relating to ownership and control for the verification of VOSBs with the United States Small Business Administration (SBA). This proposed regulation seeks to remove all references to ownership and control and to add and clarify certain terms and references that are currently part of the verification process. The NDAA also provides that in certain circumstances a firm can qualify as VOSB or Service-Disabled Veteran Owned Small Business (SDVOSB) when there is a surviving spouse or an employee stock ownership plan (ESOP).

**DATES:**

Comments must be received by VA on or before March 12, 2018.

**ADDRESSES:**

Written comments may be submitted through *www.Regulations.gov* (<http://www.Regulations.gov>); by mail or hand-delivery to Director, Regulation Policy and Management (oOREG), Department of Veterans Affairs, 810 Vermont Ave. NW, Room 1063b, Washington, DC 20420; or by fax to (202) 273-9026.

Comments should indicate that they are submitted in response to "RIN 2900-AP97—VA Veteran-Owned Small Business (VOSB) Verification Guidelines." Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1064, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 461-4902 for an appointment. (This is not a toll-free number.) In addition, during the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at *www.Regulations.gov* (<http://www.Regulations.gov>).

**FOR FURTHER INFORMATION CONTACT:**

Tom McGrath, Director, Center for Verification and Evaluation (ooVE), Department of Veterans Affairs, 810 Vermont Ave. NW, Washington, DC 20420, [Thomas.McGrath2@va.gov](mailto:Thomas.McGrath2@va.gov)  
(mailto:Thomas.McGrath2@va.gov), (202) 461-4300. (This is not a toll-free number.)

**SUPPLEMENTARY INFORMATION:**

An Advanced Notice of Proposed Rulemaking was provided with a 60-day comment period which ended on July 12, 2013. VA received comments from numerous commenters; on November 6, 2015, a proposed rule was published in the **Federal Register** (80 FR 68795 (/citation/80-FR-68795)) which sought to amend 38 CFR part 74 (/select-citation/2018/01/10/38-CFR-74) to find an appropriate balance between preventing fraud in the Veterans First Contracting Program and providing a process that would make it easier for eligible VOSBs to become verified. VA received comments from numerous commenters. In drafting this proposed rule, VA has considered the issues raised by the comments submitted in response to both the July 12, 2013 and the November 6, 2015 publications. We thank all commenters for their participation in this process. The bases for the proposed amendments are as follows.

In Public Law 114-840 (<https://api.fdsys.gov/link?collection=plaw&congress=114&lawtype=public&lawnum=840&link-type=html>), the NDAA designates the SBA as the Federal Agency responsible for creating regulations governing ownership and control. As regulations relating to and clarifying ownership and control are no longer the responsibility of VA, VA is proposing to remove the six (6) definitions from § 74.1 that relate to and clarify ownership and control. Specifically VA is proposing to remove the following definitions: Day-to-day management, day-to-day operations, immediate family member, negative control, same or similar line of business, and unconditional ownership. In addition, VA proposes to remove one additional definition, *VetBiz.gov*, to account for anticipated changes to the location of the Vendor Information Pages database.

Within § 74.1, VA also proposes to create three new definitions and amend sixteen (16) others. The new definition “applicant” clarifies the use of the term throughout the regulation. The new definition “application days” is added to clarify the manner by which the time period in § 74.11(a) is computed. The definition <http://www.va.gov/osdbu> (<http://www.va.gov/osdbu>) is added to identify the hosting website as VA is considering replacing *VetBiz.gov* as the host of the Vendor Information Pages database. The new definition will allow VA to transition to a new host site without requiring further amendments to 38 CFR part 74 (/select-citation/2018/01/10/38-CFR-74).

VA is proposing to amend the definitions Center for Veterans Enterprise, joint venture, Office of Small and Disadvantaged Business Utilization, non-veteran, participant, primary industry classification, principal place of business, service-disabled veteran, service-disabled veteran owned small business, small business concern, surviving spouse, vendor information pages, verification eligibility, veteran, veterans affairs acquisition regulation, and veteran-owned small business. For consistency, VA also proposes to remove all references to *VetBiz* and in various places replace the words Center for Verification and Evaluation, service-disabled veteran-owned small business, the Department of Veterans Affairs,  Vendor Information Pages, and veteran-owned small business and use in their place the respective abbreviations—CVE, SDVOSB, VA, VIP, and VOSB in titles and the body of the regulation.

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VA is proposing to amend the definition of Center for Veterans Enterprise by changing the term to Center for Verification and Evaluation (CVE) to reflect the name change effectuated at 78 FR 59861 (/citation/78-FR-59861), September 30, 2013. The definition of CVE would be further amended to reflect the change to the functions of this office to verification activities. The last sentence of the definition will be removed to clarify CVE's function.

VA is proposing to amend the definition joint venture to conform to the amendments to 13 CFR part 125 (/select-citation/2018/01/10/13-CFR-125) as it pertains to SDVOSB joint ventures. VA has also added language to clearly address the current policy by indicating that at least one venturer must be a VOSB.

VA is proposing to amend the definition of Office of Small and Disadvantaged Business Utilization to more accurately reflect the role fulfilled by this office with respect to VOSB matters.

VA is proposing to amend the definition of non-veteran to remove the reference to VetBiz, as VA is considering moving the site which hosts the Vendor Information Pages database.

VA is proposing to amend the definition of participant to emphasize CVE's role in verifying status.

VA is proposing to amend the definition of primary industry classification to make a technical change to use the acronym NAICS as it has already been defined in a parenthetical earlier in the definition.

VA is proposing to amend the definition of principal place of business to change day to day operations to daily business operations in order to match the wording in 13 CFR 125.13 (/select-citation/2018/01/10/13-CFR-125.13).

VA is proposing to amend the definition of service-disabled veteran as the current definition has led to confusion regarding the documentation necessary to establish a service-connected disability. This change would also help increase program efficiency by specifically referencing BIRLS, the system that allows CVE to quickly and accurately determine veteran status.

VA is proposing to amend the definition of service-disabled veteran-owned small business concern to align the definition with the definition for `small business concern owned and controlled by service-disabled veterans' proposed by SBA in the amendment to 13 CFR 125.11 (/select-citation/2018/01/10/13-CFR-125.11).

VA is proposing to amend the definition of small business concern to align the definition with the definition for `small business concern' proposed by SBA in the amendment to 13 CFR 125.11 (/select-citation/2018/01/10/13-CFR-125.11).

VA is proposing to amend the definition of surviving spouse to reorder existing language and incorporate additional requirements outlined in the NDAA. The amended definition would provide that immediately prior to death of the deceased veteran the concern must have been owned and controlled in accordance with 13 CFR part 125 (/select-citation/2018/01/10/13-CFR-125) and the concern was listed in VIP.

VA is proposing to amend the definition of Vendor Information Pages to replace the reference to the website <http://www.VetBiz.gov> (<http://www.VetBiz.gov>) with the website that is the successor to *VetBiz.gov* and allow for CVE to make reasonable and necessary adjustments without the need for an amendment of the regulation.

VA is proposing to remove the definition of *Vetbiz.gov* to account for anticipated changes to the location of the Vendor Information Pages database.

VA is proposing to amend the definition of verification eligibility period to reflect the current eligibility period of 3 years, which was effectuated via publication in the **Federal Register** on February 21, 2017 at 82 FR 11154 (/citation/82-FR-11154). Additionally, a technical change would amend the reference to Center for Veterans Enterprise by replacing it with the abbreviation CVE. A final technical change would replace the word “year” with “eligibility period” to agree with the change in the first sentence.

VA is proposing to amend the definition of Veteran to add a reference to the Veterans Benefits Administration (VBA). This revised definition is meant to be inclusive of all persons who served on active duty and were discharged or released under conditions other than dishonorable. Historically, the program has had an issue wherein applicants who did in fact qualify as veterans under the statutory definition, did not meet the standards outlined in § 74.1. This change is not intended to create a new class of veteran, but rather to clarify that those who are eligible under the applicable statutes will be found eligible for participation in this program.

VA is proposing to amend the definition of Veterans Affairs Acquisition Regulation to remove the term U.S. Department of Veterans Affairs and replace it with the abbreviation for VA as previously defined in § 74.1.

VA is proposing to amend the definition of Veteran-owned small business, in accordance with the NDAA, to reflect that stock owned by ESOPs which in turn are owned by one or more veterans are not included in determining requisite ownership percentage, and to use the abbreviations that have been previously defined in § 74.1.

VA is proposing to amend § 74.2 by revising paragraphs (a)-(e) and adding new paragraph (g). In both 2010 and 2012, GAO published reports tasking VA with reducing potential instances of fraud, waste, and abuse. VA has found in its administration of the verification program that the use of the procedures identified in § 74.2 protects VA acquisition integrity and diminishes ongoing exposure to fraud, waste, and abuse. Therefore, for such limited situations as identified in § 74.2, and only in these limited instances, VA finds that immediate removal from public listing is warranted in order to protect the integrity of VA procurement. Accordingly, the proposed amendments to § 74.2 would serve to more comprehensively outline the circumstances under which a participant would be found ineligible for the VOSB Verification program.

VA is proposing to amend § 74.2(a) to add the clause “submitted required supplemental documentation at <http://www.va.gov/osdbu> (<http://www.va.gov/osdbu>) to clearly explain the key steps necessary to submit an application and obtain verification. Additionally, a technical change would be made to use the abbreviated form “CVE” for consistency.

VA is proposing to amend § 74.2(b) to address the impact of criminal activity on eligibility and thus better protect the government from fraud, waste, and abuse. The title would be amended to reference the System for Award Management (SAM), which has replaced the Excluded Parties List System. Additionally, the language of the first sentence would be amended to address the impact of 38 U.S.C. 8127 ([\(https://api.fdsys.gov/link?collection=uscode&title=38&year=mostrecent&section=8127&type=usc&link-type=html\)](https://api.fdsys.gov/link?collection=uscode&title=38&year=mostrecent&section=8127&type=usc&link-type=html))(g)(3), which now VA authority to exclude all principals in the business concern. Accordingly, the language of § 74.2 would be amended to specify that the debarment of any individual holding an ownership and control interest in the concern will impact the concern's eligibility.

VA is proposing to amend § 74.2(c) by adding the phrase “false statements or information” to reference the title and provide further clarification on the eligibility requirements. The removal provision would be additionally reworded to clarify that removal is immediate. Finally, a technical change would remove the word “the” before CVE in the last sentence. □

VA is proposing to amend § 74.2(d) by including tax liens and unresolved debts owed to various governmental entities outside of the Federal Government as financial obligations that would disqualify an applicant for inclusion in the VIP database. The title would be additionally amended to reflect this change. If after verifying the participant's eligibility, CVE discovers that the participant no longer satisfies this requirement, CVE will remove the participant from the VIP database in accordance with § 74.22. Finally, a technical change would remove the word "VetBiz" before verification in the last sentence.

VA is proposing to amend § 74.2(e) to clarify the consequences of SBA protest decisions and other negative findings. "Other negative findings" will additionally be clarified by specifically referencing status protest decisions. A technical change would remove the word "VetBiz" before verification throughout. The title of this section would additionally be amended to clarify this section is not limited to SBA decisions. In order to properly capture the impact of negative findings, § 74.2(e) would continue to clarify removal is immediate. The second sentence would be amended to take into account "other negative findings".

VA is proposing to amend § 74.2(f) to specifically reference the System for Award Management (SAM) registration. SAM is a consolidated listing of previous databases and was not in existence at the time the original regulation was created and therefore was not referenced. Registration through SAM is required by 48 CFR 4.1200 (/select-citation/2018/01/10/48-CFR-4.1200) as supplemented by 48 CFR 804.1102 (/select-citation/2018/01/10/48-CFR-804.1102).

VA is proposing to amend § 74.3(a) to reflect that ownership is determined in accordance with 13 CFR part 125 (/select-citation/2018/01/10/13-CFR-125) as the result of the amendments to Title 38 of the United States Code as set forth in the NDAA.

VA is proposing to amend § 74.3(e) to redesignate this paragraph as § 74.3(b) to account for the removal of paragraphs (a)-(d). VA is proposing to amend § 74.3(b)(1) by a technical change to replace "application" with "VA Form 0877" in order to clarify the requirement and conform language to the rest of the regulation. VA is proposing to amend § 74.3(b)(1) to add a 30-day time period for submission of a new application after a change in ownership. This change would provide CVE the ability to definitively and accurately track changes of ownership. Further, by adding a time period for a new application, the program would be better able to comply with its statutory mandate to verify that all concerns listed in the VIP Database meet the prescribed ownership and control requirements of the verification program.

VA is proposing to amend § 74.3(b)(3) by a technical change to replace "application" with "VA Form 0877" in order to clarify the requirement and conform language to the rest of the regulation.

VA is proposing to amend § 74.4(a) to state that control is determined in accordance with 13 CFR part 125 (/select-citation/2018/01/10/13-CFR-125) pursuant to the NDAA. Paragraphs (b)-(i) would be removed.

VA is proposing to amend § 74.5 to include joint ventures. The paragraph would additionally be reworded to clearly establish that 38 CFR part 74 (/select-citation/2018/01/10/38-CFR-74) does not supersede 13 CFR part 121 (/select-citation/2018/01/10/13-CFR-121) with respect to size determinations. VA is proposing to add paragraph (b) to specifically address eligibility of joint ventures. Subparagraphs (b)(1) and (b)(2) would be added to provide notice of applicable requirements outlined elsewhere in VA regulation.

VA is proposing to amend § 74.10 to remove reference to the physical address for CVE. Addresses or methods for submission may change over time, and this change allows CVE to make reasonable and necessary adjustments without the need for an amendment to the regulation. This section would be further amended to remove the word “VetBiz” before verification, and change “located” to “contained” in the last sentence for better clarity. Finally, a technical change would remove the word “the” before CVE in the last sentence.

VA is proposing to amend § 74.11 to redesignate paragraphs (c)-(g) to account for addition of new paragraph (c). VA is proposing to amend § 74.11(a) to accommodate a more veteran-friendly, customer service centric approach to processing applications. “Center for Veterans Enterprise” would be changed to “CVE” and “[t]he CVE” would be changed to “CVE”. Additionally, VA is proposing to amend § 74.11(a) to incorporate the term ‘application days’ and to increase the review period to 90 application days, when practicable, to accommodate time spent between registering for verification and the time that all required documentation is received and the application is deemed complete.

VA is proposing to amend § 74.11(c) to address instances where CVE does not receive all requested documentation. VA must verify applicants prior to admission in the database. In order to comply with the statute, VA requests documentation to demonstrate eligibility. This proposed revision would notify the public that failure to adequately respond to document requests may render CVE unable to verify the eligibility of a concern and therefore may result in a denial or administrative removal.

VA is proposing to amend § 74.11(c) to be redesignated as § 74.11(d) and to make a technical change to insert a reference to the newly added paragraph (c). Additionally, the reference to paragraph (d) would be changed to paragraph (e) to account for the redesignation. VA is proposing to add the term “totality of circumstances” to clarify long standing CVE interpretation and procedure. References to § 74.11(b) and § 74.13(a) would be added to highlight all applicable exceptions. Finally, a last sentence would be added to clarify the longstanding policy that the applicant bears the burden of establishing VOSB status.

VA is proposing to amend § 74.11(d) to be redesignated as § 74.11(e). The first and second sentences would be amended by removing the word “adversely.” The third sentence would be removed as it refers to withdrawal or removal of verified status. This scenario will be addressed in § 74.21, which specifically deals with how participants can exit the VIP database. Therefore, the removal would help to eliminate redundancy and reduce the likelihood of confusion. Additionally, VA is proposing to add § 74.11(e)(1) to specifically address bankruptcy as a changed circumstance. Subparagraphs (a)-(c) would be added to outline requirements applicable to firms undergoing the bankruptcy process.

VA is proposing to amend § 74.11(e) to be redesignated as § 74.11(f).

VA is proposing to amend § 74.11(f) to be redesignated as § 74.11(g).

VA is proposing to amend § 74.11(g) to be redesignated as § 74.11(h). A second sentence would be added to increase program efficiency by requiring firms to provide updated contact information. This would allow the program to use the most efficient methods to dispatch determinations and ensure that applicants will receive determinations in a timely manner.

VA is proposing to amend § 74.12 to expand the list of required documentation in order to provide the public notice of documentation that is routinely requested by CVE. This amended list would include documents previously referenced by § 74.20(b). While the documents would still be required for examination as described in § 74.20(b), they also are initially required for the application. As the application is a concern's first exposure with the process, VA finds this list  would be more appropriately placed in this § 74.12 to

notify the public of the documentary requirements. Additionally, “electronic form” would be changed to “VA Form 0877” throughout for clarity. Similarly, “attachments” would be changed to “supplemental documentation” throughout. Finally, the last two sentences would be removed for clarity.

VA is proposing to amend § 74.13 to modify the title and to remove references to the previous reconsideration process, to include removing paragraphs (b)-(d). In accordance with the NDAA, appeals of initial denials on the grounds of ownership and control will be adjudicated by SBA's Office of Hearings and Appeals (OHA) in accordance with 13 CFR part 134 (/select-citation/2018/01/10/13-CFR-134). Accordingly, Section 74.13 (a) would be amended to refer to the appeal process set forth in 13 CFR part 134 (/select-citation/2018/01/10/13-CFR-134).

VA is proposing to amend § 74.13(e) to be redesignated as § 74.13(b). VA is further proposing to modify this section to reflect the removal of the reconsideration process and to remove the phrase ‘service-disabled veteran’ as the term veteran is now used to refer to both veterans and service-disabled veterans throughout. VA is proposing to delete paragraphs (f) and (g) as they are no longer relevant to the process.

VA is proposing to amend § 74.14 to remove references to requests for reconsideration and to include notices of verified status cancellation and denials of appeals in the list of determinations that trigger a waiting period before a concern may submit a new verification application. Including denial of appeals takes into consideration any appeal filed with OHA that sustains the initial denial letter issued by CVE. The program has instituted several procedures through policy to assist applicants to identify and address easily correctable issues that render the applicant ineligible. Therefore, the class of notices listed in § 74.14 are issued to applicants with substantial issues in their business structure or underlying documentation that result in ineligibility.

VA is proposing to further amend § 74.14 to be redesignated as § 74.14(a). A new paragraph § 74.14(b) would be added to clarify that a finding of ineligibility during a reapplication will result in the immediate removal of the participant. VA only intends, to the extent practicable, to list as verified in the VIP database concerns which currently meet verification requirements. This proposed change would clarify current policy and serve the important purpose of assisting contracting officers in the procurement process by ensuring the database only includes concerns that are eligible for award of set aside procurements. A final technical change removes the word “VetBiz” before verification throughout.

VA is proposing to amend § 74.15(a) by splitting the paragraph into paragraphs (a), (b), and (c). A technical change would be made to what would be redesignated as § 74.15(a) to improve specificity. A change would be made to what would be redesignated as § 74.15(b) to require participants to inform CVE within 30 days of changes affecting eligibility, consistent with § 74.3(f)(1). A substantive change would be made to the list that would be redesignated as § 74.15(c), which would be expanded to include all situations in which the eligibility period may be shortened. VA is proposing to remove § 74.15(b) because it deals with affiliation and would therefore be addressed in § 74.5. Therefore, any shortening of the eligibility period due to an affiliation determination would result from an SBA determination. This scenario would be addressed by § 74.2(e) and is referenced appropriately at what would be designated § 74.15(c). A technical change would remove the word “VetBiz” before verification throughout. Finally, paragraphs (c), (d), and (e) would be redesignated as (d), (e), and (f) respectively. The redesignated § 74.15(e) will be amended to reference immediate removals pursuant to § 74.2.

VA is proposing to amend the first three sentences of § 74.20(b) for simplicity and clarification. In the first sentence, the phrase, “or parts of the program examination” would be removed. In the second sentence, “location” would be changed to “location(s)”. In the third sentence, the word “[e]xaminers” is changed to



“CVE”. As the proposed revisions to § 74.12 would fully address the required documentation necessary for verification the complete list would be removed from § 74.20 in order to avoid redundancy and confusion. A final technical change removes the word “VetBiz” before verification throughout.

VA is proposing to amend § 74.21 to reorder for clarity and to conform with changes made to other sections of this Part. VA is proposing to amend § 74.21(a) by a technical change to remove reference to the “`verified` status button” in order to reflect the current graphical user interface of the VIP database. Additionally, “Vendor Information Pages” would be changed to “VIP.” VA is proposing to amend § 74.21(b) by changing “Vendor Information Pages” to “VIP.” VA is proposing to amend § 74.21(c) by referencing the immediate removal provisions established by and clarified in § 74.2. VA is proposing to amend § 74.21(c) and associated subparagraphs to be redesignated as § 74.21(d) and associated subparagraphs. Additionally, reference to the “`verified` status button” would be removed to reflect the current graphical user interface of the database. VA is proposing to remove § 74.21(c)(5) as involuntary exclusions would now be addressed in § 74.2. VA is proposing to amend § 74.21(c)(6) to be redesignated as Section 74.21(d)(5) to account for deletion of § 74.21(c)(5). Additionally, the phrase “or its agents” would be added to clarify who may request documents, and the words “a pattern of” will be deleted to clarify the requirements necessary to remove a company for failure to provide requested information. In the past, establishing a pattern of failure has led to ineligible firms maintaining verified status for an extended period of time by failing to provide requested documentation. This change would help CVE protect the integrity of the procurement process while still providing firms notice and opportunity to be heard prior to cancellation. VA is proposing to amend § 74.21(c)(7) to be redesignated as § 74.21(d)(6) to account for deletion of § 74.21(c)(5). VA is proposing to remove § 74.21(c)(8) as the action addressed by that provision would now be addressed in § 74.2. VA is proposing to amend § 74.21(c)(10) to be redesignated as § 74.21(d)(7). The term “application” would be removed as VA Form O877 reflects current program requirements. The phrase `60 days` would be changed to `30 days` to conform with revised § 74.3(f)(1) of this part. VA is proposing to add § 74.21(d)(8) to notify the public that failure to report changed circumstances within 30 days is in and of itself good cause to initiate cancellation proceedings. VA is proposing to amend § 74.21(d) to be redesignated as § 74.21(e).

VA is proposing to amend § 74.22(a) to begin the relevant 30-day time period on the date on which CVE sends notice of proposed cancellation of verified status. This change would provide the agency the ability to definitively and accurately track the cancellation proceedings. Additionally, this change would provide the agency the ability to control the regulatory time period and consistently apply the subsequent provisions of the paragraph. VA is proposing to amend § 74.22(e) to implement the new appeals procedure to OHA prescribed in the NDAA.

VA is proposing to amend § 74.25 to replace “the Department” with “VA”. □

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VA is proposing to amend § 74.26 to reflect the amended title of § 74.12.

VA is proposing to amend § 74.27 to reword the first sentence to specify that all documents submitted to the program, not only those used to complete applications, will be stored electronically. Additionally, the “Vendor Information Pages” would be changed to “CVE” in order to clearly denote who will be in possession of the documents and responsible for their retention. The location reference would be removed due to the electronic nature of the records to be maintained by the program. The second sentence would be revised to indicate that any owner information provided will be compared to any available records. Finally, references to records management procedures to be followed and procedures governing data breaches would be added.

VA is proposing to amend § 74.28 to replace `Department of Veterans Affairs` and `Center for Veterans Enterprises` VA and CVE respectively.

VA is proposing to amend § 74.29 to refer to VA's records management procedures, which would govern, absent a timely written request from the Government Accountability Office.

### **Effect of Rulemaking**

The Code of Federal Regulations, as proposed to be revised by this rulemaking, would represent the exclusive legal authority on this subject. No contrary rules or procedures would be authorized. All VA guidance would be read to conform with the rule finally adopted if possible or, if not possible, such guidance would be superseded.

### **Paperwork Reduction Act**

This proposed rule contains no provision constituting a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 (<https://api.fdsys.gov/link?collection=uscode&title=44&year=mostrecent&section=3501&type=usc&link-type=html>)-3521).

### **Regulatory Flexibility Act**

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601 (<https://api.fdsys.gov/link?collection=uscode&title=5&year=mostrecent&section=601&type=usc&link-type=html>)-612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. Small entities include small businesses, small not-for-profit organizations, and small governmental jurisdictions. Section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an analysis, if the rulemaking is not expected to have a significant economic impact on a substantial number of small entities.

This rule making has an average cost to the small business of \$803, and it would apply only to applying for verified status in the Vendor Information Pages (VIP) database. The proposed regulation would merely seek to clarify and streamline the existing rule and would add no additional burdens or restrictions on applicants or participants with regard to VA's VOSB Verification Program. The overall impact of the proposed rule would be of benefit to small businesses owned by veterans or service-disabled veterans.

The overall impact of the proposed rule will not affect small businesses owned and controlled by veterans and service-disabled veterans. The proposed rule removes ownership and control from 38 CFR part 74 (</select-citation/2018/01/10/38-CFR-74>) which will be assumed under a separate set of regulations promulgated by SBA. The proposed rule also refines and clarifies process steps and removes post examination review. Post examination review will also be assumed under a separate set of regulations.

Examination of businesses seeking verification as veteran-owned small businesses or service-disabled veteran owned small businesses seeking VA set aside contract opportunities is through the MyVA examination model. The MyVA examination model revises the verification process by assigning dedicated case analysts and providing applicants with additional access to VA staffers during verification.

From December 2016 through February 2017, 352 small businesses that completed the MyVA process and received determination letters participated in a follow-up survey detailing their costs and the attribution of the costs. Seventy-three (73) percent of participating businesses had either \$0 costs or responded not applicable; 14 percent estimated costs between \$1 and \$1,000; 3 percent responded with a cost estimate between \$1,001 and \$2,000; 3 percent responded with a cost estimate between \$2,001 and \$3,000; 2 percent responded with a cost estimate between \$3,001 and \$4,000; 2 percent responded with a cost estimate between \$4,001 and \$5,000; and 4 percent responded with a cost estimate over \$5,000. The average cost of all businesses providing survey responses was \$803 per business. The largest cost categories were employee costs, attorney costs, travel/printing, consultants, and accountants. As of the end of April

2017, there were 10,088 verified companies in VA's database and 3,254 companies with applications in process. On this basis, the Secretary certifies that the adoption of this proposed rule would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act. Therefore, under 5 U.S.C. 605 (<https://api.fdsys.gov/link?collection=uscode&title=5&year=mostrecent&section=605&type=usc&link-type=html>)(b), this rulemaking is exempt from the initial and final regulatory flexibility analysis requirements of §§ 603 and 604.

### **Executive Orders 12866 and 13563**

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages, distributive impacts and equity). Executive Order 13563 (</executive-order/13563>) (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 12866 (Regulatory Planning and Review) defines a "significant regulatory action," which requires review by the Office of Management and Budget (OMB), as "any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order."

The economic, interagency, budgetary, legal, and policy implications of this regulatory action have been examined, and it has been determined not to be a significant regulatory action under Executive Order 12866.

### **Unfunded Mandates**

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532 (<https://api.fdsys.gov/link?collection=uscode&title=2&year=mostrecent&section=1532&type=usc&link-type=html>), that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in any one year. This proposed rule would have no such effect on State, local, and tribal governments, or on the private sector. □

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### **Catalog of Federal Domestic Assistance**

This proposed rule would affect the verification guidelines of veteran-owned small businesses, for which there is no Catalog of Federal Domestic Assistance program number.

### **List of Subjects in 38 CFR Part 74 (/select-citation/2018/01/10/38-CFR-74)**

- Administrative practice and procedure; Definitions; Appeals; Eligibility requirements; Ownership requirements; Control requirements; Affiliation; Application guidelines; Request for reconsideration; Reapplication; Eligibility term; Verification examination; Procedures for cancellation; Records management

### **Signing Authority**

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. Gina S. Farrisee, Deputy Chief of Staff, Department of Veterans Affairs, approved this document on October 13, 2017, for publication.

Dated: October 13, 2017.

Jeffrey Martin,

Office Program Manager, Office of Regulation Policy Management, Office of the Secretary, Department of Veterans Affairs.

For the reasons set forth in the preamble, we propose to amend 38 CFR part 74 (/select-citation/2018/01/10/38-CFR-74) as follows:

## **PART 74—VETERANS SMALL BUSINESS REGULATIONS**

1. The authority citation for Part 74 continues to read as follows:

**Authority:** 38 U.S.C. 501 (<https://api.fdsys.gov/link?collection=uscode&title=38&year=mostrecent&section=501&type=usc&link-type=html>) and 513, unless otherwise noted.

2. Revise § 74.1 to read as follows:

### **§ 74.1 What definitions are important for Vendor Information Pages (VIP) Verification Program?**

For the purpose of part 74, the following definitions apply.

*Applicant* means a firm applying for inclusion in the VIP database.

*Application days* means the time period from when a veteran registers for verification to the time of a determination, excluding any days in which CVE is waiting for the firm to submit information or documentation necessary for the office to continue processing the application.

*Center for Verification and Evaluation (CVE)* is an office within the U.S. Department of Veterans Affairs (VA) and is a subdivision of VA's Office of Small and Disadvantaged Business Utilization. CVE receives and reviews all applications for eligibility under this part and maintains the VIP database. CVE assists VA contracting offices to identify veteran-owned small businesses and communicates with the Small Business Administration (SBA) with regard to small business status.

*Days* are calendar days unless otherwise specified. In computing any period of time described in part 74, the day from which the period begins to run is not counted, and when the last day of the period is a Saturday, Sunday, or Federal holiday, the period extends to the next day that is not a Saturday, Sunday, or Federal holiday. Similarly, in circumstances where CVE is closed for all or part of the last day, the period extends to the next day on which the agency is open.

*Eligible individual* means a veteran, service-disabled veteran, or surviving spouse, as defined in this section.

*Joint venture* is an association of two or more business concerns for which purpose they combine their efforts, property, money, skill, or knowledge in accordance with 13 CFR part 125 (/select-citation/2018/01/10/13-CFR-125). A joint venture must be comprised of at least one veteran-owned small business. For VA contracts, a joint venture must be in the form of a separate legal entity.

*Non-veteran* means any individual who does not claim veteran status, or upon whose status an applicant or participant does not rely in qualifying for the VIP Verification Program participation.

*Office of Small and Disadvantaged Business Utilization (OSDBU)* is the office within VA that establishes and monitors small business program goals at the prime and subcontract levels. OSDBU works with VA Acquisitions to ensure the creation and expansion of small businesses opportunities by promoting the use of set-aside contracting vehicles within VA procurement. OSDBU connects and enables veterans to gain access to these Federal procurement opportunities. The Executive Director, OSDBU, is the VA liaison with the SBA. Information copies of correspondence sent to the SBA seeking a certificate of competency determination must be concurrently provided to the Director, OSDBU. Before appealing a certificate of competency, the Head of Contracting Activity must seek concurrence from the Director, OSDBU.

*Participant* means a veteran-owned small business concern which CVE has verified and deemed eligible to participate in VA's veteran-owned small business program.

*Primary industry classification* means the six-digit North American Industry Classification System (NAICS) code designation which best describes the primary business activity of the participant. The NAICS code designations are described in the NAICS Manual published by the U.S. Office of Management and Budget.

*Principal place of business* means the business location where the individuals who manage the concern's daily business operations spend most working hours and where top management's current business records are kept. If the office from which management is directed and where the current business records are kept are in different locations, CVE will determine the principal place of business for program purposes.

*Service-disabled veteran* is a veteran who possesses a service-connected disability rating between 0 and 100 percent. For the purposes of VA's veteran-owned small business program, the service-connected disability can be established by either registration in the Beneficiary Identification and Records Locator Subsystem (BIRLS) maintained by the Veterans Benefits Administration (VBA), a disability rating letter issued by VA, or a disability determination from the Department of Defense.

*Service-disabled veteran-owned small business concern (SDVOSB)* means any of the following:

(1) A small business concern—

(i) Not less than 51 percent of which is owned by one or more service-disabled veterans or, in the case of any publicly owned business, not less than 51 percent of the stock (not including any stock owned by an ESOP) of which is owned by one or more service-disabled veterans; and

(ii) The management and daily business operations of which are controlled by one or more service-disabled veterans or, in the case of a veteran with permanent and severe disability, the spouse or permanent caregiver of such veteran;

(2) A small business concern—

(i) Not less than 51 percent of which is owned by one or more service-disabled veterans with a disability that is rated by the Secretary of Veterans Affairs as a permanent and total disability who are unable to manage the daily business operations of such concern; or

(ii) In the case of a publicly owned business, not less than 51 percent of the stock (not including any stock owned by an ESOP) of which is owned by one or more such veterans.

*Small business concern (SBC)* means a concern that satisfies the definition of concern in FAR 19.001 and, with its affiliates, meets the size standard for its □ primary industry, pursuant to part 121 of chapter 13.

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*Surviving spouse* is any individual identified as such by VBA and listed in its database of veterans and family members in accordance with 101(3) of title 38, United States Code. For a concern whose eligibility for the VIP database is based on the ownership of a surviving spouse, the concern must have been owned and controlled in accordance with 13 CFR part 125 (/select-citation/2018/01/10/13-CFR-125) immediately prior to the death of the deceased veteran; and

(1) The service-disabled veteran's death causes the concern to be owned by less than 51 percent by one or more service-disabled veteran(s);

(2) The surviving spouse of such deceased veteran acquires such veteran's ownership in the concern;

(3) The deceased veteran had a service-connected disability rated as 100 percent disabling under the laws administered by the Secretary of Veterans Affairs or such died as a result of a service-connected disability; and

(4) Immediately prior to the death of such, and, to the extent applicable, during the earlier of the periods described in paragraphs (i) through (iii) of this definition, the concern was included in VIP:

(i) The date on which the surviving spouse remarries;

(ii) The date on which the surviving spouse relinquishes an ownership interest in the small business concern; or

(iii) The date that is 10 years after the date of the death of the veteran.

(iv) The date on which the business concern is no longer small under Federal small business size standards.

### **Note to Definition of Surviving Spouse:**

For program eligibility purposes, the surviving spouse has the same rights and entitlements of the service-disabled veteran who transferred ownership upon his or her death.

VA is the U.S. Department of Veterans Affairs.

*Vendor Information Pages (VIP)* is a database of businesses eligible to participate in VA's Veteran-owned Small Business Program. The online database may be accessed at no charge via the internet at <https://www.va.gov/osdbu> (<https://www.va.gov/osdbu>).

*Verification eligibility period* is a 3-year period that begins on the date CVE issues its approval letter establishing verified status. The participant must submit a new application for each eligibility period to continue eligibility.

*Veteran* has the meaning given the term in section 101(2) of title 38, United States Code, as interpreted through Title 38 of the CFR. In addition, any person having a determination of veteran status from VBA, and who was discharged or released under conditions other than dishonorable will be deemed to be a veteran for the purposes of this program.

*Veteran-owned small business concern (VOSB)* is a small business concern that is not less than 51 percent owned by one or more veterans, or in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more veterans (not including any stock owned by an ESOP of which is owned by one or more veterans); the management and daily business operations of which are controlled by one or more veterans and qualifies as "small" for Federal business size standard purposes. All service-disabled veteran-owned small business concerns (SDVOSB) are also, by definition, veteran-owned small business concerns. When used in these guidelines, the term "VOSB" includes SDVOSB.

*Veterans Affairs Acquisition Regulation (VAAR)* is the set of rules that specifically govern requirements exclusive to VA prime and subcontracting actions. The VAAR is chapter 8 of title 48, Code of Federal Regulations, and supplements the Federal Acquisition Regulation (FAR), which contains guidance applicable to most Federal agencies.

**3. Revise § 74.2 to read as follows:**

**§ 74.2 What are the eligibility requirements a concern must meet for the VIP Verification Program?**

(a) *Ownership and control.* A small business concern must be unconditionally owned and controlled by one or more eligible veterans, service-disabled veterans or surviving spouses, have completed the online VIP database forms, submitted required supplemental documentation at <http://www.va.gov/osdbu> (<http://www.va.gov/osdbu>), and have been examined by VA's CVE. Such businesses appear in the VIP database as "verified".

(b) *Good character and exclusions in System for Award Management (SAM).* Individuals having an ownership or control interest in verified businesses must have good character. Debarred or suspended concerns or concerns owned or controlled by debarred or suspended persons are ineligible for VIP Verification. Concerns owned or controlled by a person(s) who is currently incarcerated, or on parole or probation (pursuant to a pre-trial diversion or following conviction for a felony or any crime involving business integrity) are ineligible for VIP Verification. Concerns owned or controlled by a person(s) who is formally convicted of a crime set forth in 48 CFR 9.406 (/select-citation/2018/01/10/48-CFR-9.406)-2(b)(3) are ineligible for VIP Verification during the pendency of any subsequent legal proceedings. If, after verifying a participant's eligibility, the person(s) controlling the participant is found to lack good character, CVE will immediately remove the participant from the VIP database, notwithstanding the provisions of § 74.22 of this part.

(c) *False statements.* If, during the processing of an application, CVE determines, by a preponderance of the evidence standard, that an applicant has knowingly submitted false information, regardless of whether correct information would cause CVE to deny the application, and regardless of whether correct information was given to CVE in accompanying documents, CVE will deny the application. If, after verifying the participant's eligibility, CVE discovers that false statements or information have been submitted by a firm, CVE will remove the participant from the VIP database immediately, notwithstanding the provisions of § 74.22 of this part. Whenever CVE determines that the applicant submitted false information, the matter will be referred to the VA Office of Inspector General for review. In addition, CVE will request that debarment proceedings be initiated by the Department.

(d) *Financial obligations.* Neither an applicant firm nor any of its eligible individuals that fails to pay significant financial obligations, including unresolved tax liens and defaults on Federal loans or State or other government assisted financing, owed to the federal government, the District of Columbia or any state, district, or territorial government of the United States, is eligible for VIP Verification. If after verifying the participant's eligibility CVE discovers that the participant no longer satisfies this requirement, CVE will remove the participant from the VIP database in accordance with § 74.22 of this part.

(e) *Protest decisions or other negative findings.* Any firm verified in the VIP database that is found to be ineligible by a SDVOSB/VOSB status protest decision will be immediately removed from the VIP database, notwithstanding the provisions of § 74.22 of this part. Any firm verified in the VIP database that is found to be ineligible due to a U.S. Small Business Administration (SBA) protest decision or other negative finding may be immediately removed from the VIP database, notwithstanding the provisions of § 74.22 of this part. Until such time as CVE receives official notification that the firm has proven that it has successfully overcome the  grounds for the determination, that the decision is overturned on appeal, or the firm applies for and receives verified status from CVE, the firm will not be eligible to participate in the 38 U.S.C. 8127 (<https://api.fdsys.gov/link?collection=uscode&title=38&year=mostrecent&section=8127&type=usc&link-type=html>) program.

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(f) *System for Award Management (SAM) registration.* All applicants for VIP Verification must be registered in SAM at <http://www.sam.gov> (<http://www.sam.gov>), or its successor prior to application submission.

4. Revise § 74.3 to read as follows:

**§ 74.3 Who does CVE consider to own a veteran-owned small business?**

(a) Ownership is determined in accordance with 13 CFR part 125 (/select-citation/2018/01/10/13-CFR-125). However, where 13 CFR part 125 (/select-citation/2018/01/10/13-CFR-125) is limited to SDVOSBs, CVE applies the same ownership criteria to firms seeking verified VOSB status.

(b) *Change of ownership.* (1) A participant may remain eligible after a change in its ownership or business structure, so long as one or more veterans own and control it after the change. The participant must file an updated VA Form 0877 and supporting documentation identifying the new veteran owners or the new business interest within 30 days of the change.

(2) Any participant that is performing contracts and desires to substitute one veteran owner for another shall submit a proposed novation agreement and supporting documentation in accordance with FAR subpart 42.12 to the contracting officer prior to the substitution or change of ownership for approval.



(3) Where the transfer results from the death or incapacity due to a serious, long-term illness or injury of an eligible principal, prior approval is not required, but the concern must file an updated VA Form 0877 with CVE within 60 days of the change. Existing contracts may be performed to the end of the instant term. However, no options may be exercised.

(4) Continued eligibility of the participant with new ownership requires that CVE verify that all eligibility requirements are met by the concern and the new owners.

5. Revise § 74.4 to read as follows:

**§ 74.4 Who does CVE consider to control a veteran-owned small business?**

Control is determined in accordance with 13 CFR part 125 (/select-citation/2018/01/10/13-CFR-125). However, where 13 CFR part 125 (/select-citation/2018/01/10/13-CFR-125) is limited to SDVOSBs, CVE applies the same control criteria to firms seeking verified VOSB status.

(Authority: 38 U.S.C. 501 (<https://api.fdsys.gov/link?collection=uscode&title=38&year=mostrecent&section=501&type=usc&link-type=html>), 513 and 8127)

6. Revise § 74.5 to read as follows:

**§ 74.5 How does CVE determine affiliation?**

(a) CVE does not determine affiliation. Affiliation is determined by the SBA in accordance with 13 CFR part 121 (/select-citation/2018/01/10/13-CFR-121).

(b) Joint ventures may apply for inclusion in the VIP Verification Program. To be eligible for inclusion in the VIP Verification Program, a joint venture must demonstrate that:

(1) The underlying VOSB upon which eligibility is based is verified in accordance with this part;

(2) The joint venture agreement complies with the requirements set forth in 13 CFR part 125 (/select-citation/2018/01/10/13-CFR-125) for SDVOSBs. However, while 13 CFR part 125 (/select-citation/2018/01/10/13-CFR-125) is limited to SDVOSBs, CVE will apply the same requirements to joint venture firms seeking verified VOSB status.

7. Revise § 74.10 to read as follows:

**§ 74.10 Where must an application be filed?**

An application for VIP Verification status must be electronically filed in the Vendor Information Pages database located on the CVE's web portal, <http://www.va.gov/osdbu> (<http://www.va.gov/osdbu>). Guidelines and forms are located on the Web portal. Upon receipt of the applicant's electronic submission, an acknowledgment message will be dispatched to the concern containing estimated processing time and other information. Address information for CVE is also located on the web portal.

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900-0675.)

8. Revise § 74.11 to read as follows:

**§ 74.11 How does CVE process applications for VIP Verification Program?**

(a) The Director, CVE, is authorized to approve or deny applications for VIP Verification. CVE will receive, review, and examine all VIP Verification applications. Once an applicant registers, CVE will contact the applicant within 30 days to initiate the process. If CVE is unsuccessful in its attempts to contact the applicant, the application will be administratively removed. If CVE is successful in initiating contact with the applicant, CVE will advise the applicant of required documents and the timeline for submission. If the applicant would be unable to provide conforming documentation, the applicant will be given the option to withdraw its application. CVE will process an application for VIP Verification status within 90 application days, when practicable, of receipt of a registration. Incomplete application packages will not be processed.

(b) CVE, in its sole discretion, may request clarification of information relating to eligibility at any time in the eligibility determination process. CVE will take into account any clarifications made by an applicant in response to a request for such by CVE.

(c) CVE, in its sole discretion, may request additional documentation at any time in the eligibility determination process. Failure to adequately respond to the documentation request shall constitute grounds for a denial or administrative removal.

(d) An applicant's eligibility will be based on the totality of circumstances existing on the date of application, except where clarification is made pursuant to paragraph (b) of this section, additional documentation is submitted pursuant to paragraph (c) of this section, as provided in paragraph (e) of this section or in the case of amended documentation submitted pursuant to section 74.13(a) of this part. The applicant bears the burden to establish its status as a VOSB.

(e) Changed circumstances for an applicant occurring subsequent to its application and which affect eligibility will be considered and may constitute grounds for denial of the application. The applicant must inform CVE of any changed circumstances that could affect its eligibility for the program (*i.e.*, ownership or control changes) during its application review.

(1) *Bankruptcy*. Bankruptcy is a change in circumstance requiring additional protection for the agency. Should a VOSB enter into bankruptcy the participant must:

(i) Inform CVE of the filing event within 30 days;

(ii) Specify to CVE whether the concern has filed Chapter 7, 11, or 13 under U.S. Bankruptcy code; and

(iii) Any participant that is performing contracts must assure performance to the contracting officer(s) prior to any reorganization or change if necessary including such contracts in the debtor's estate and reorganization plan in the bankruptcy.

(f) The decision of the Director, CVE, to approve or deny an application will be in writing. A decision to deny verification status will state the specific reasons for denial and will inform the applicant of any appeal rights.

(g) If the Director, CVE, approves the application, the date of the approval letter is the date of participant verification for purposes of determining the participant's verification eligibility term.

(h) The decision may be sent by mail, commercial carrier, facsimile transmission, or other electronic means.  It is the responsibility of the applicant to ensure all contact information is current in the applicant's profile.

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(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900-0675.)

**9.** Revise § 74.12 to read as follows:

**§ 74.12 What must a concern submit to apply for VIP Verification Program?**

Each VIP Verification applicant must submit VA Form 0877 and supplemental documentation as CVE requires. All electronic forms are available on the VIP database web pages. From the time the applicant dispatches the VA Form 0877, the applicant must also retain on file, at the principal place of business, a complete copy of all supplemental documentation required by, and provided to, CVE for use in verification examinations. The documentation to be submitted to CVE includes, but is not limited to: Articles of Incorporation/Organization; corporate by-laws or operating agreements; shareholder agreements; voting records and voting agreements; trust agreements; franchise agreements, organizational, annual, and board/member meeting records; stock ledgers and certificates; State-issued Certificates of Good Standing; contract, lease and loan agreements; payroll records; bank account signature cards; financial statements; Federal personal and business tax returns for up to 3 years; and licenses.

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900-0675.)

**10.** Amend § 74.13 by revising paragraphs (a) and (b) to read as follows:

**§ 74.13 Can an applicant appeal CVE's initial decision to deny an application?**

(a) An applicant may appeal CVE's decision to deny an application by filing an appeal with the United States Small Business Administration (SBA) Office of Hearings and Appeals (OHA) after the applicant receives the denial in accordance with 13 CFR part 134 (/select-citation/2018/01/10/13-CFR-134). The filing party bears the risk that the delivery method chosen will not result in timely receipt by OHA.

(b) A denial decision that is based on the failure to meet any veteran eligibility criteria is not subject to appeal and is the final decision of CVE.

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**11.** Revise § 74.14 to read as follows:

**§ 74.14 Can an applicant or participant reapply for admission to the VIP Verification Program?**

(a) Once an application, an appeal of a denial of an application, or an appeal of a verified status cancellation has been denied, or a verified status cancellation which was not appealed has been issued, the applicant or participant shall be required to wait for a period of 6 months before a new application will be processed by CVE.

(b) Participants may reapply prior to the termination of their eligibility period. If a participant is found to be ineligible, the participant will forfeit any time remaining on their eligibility period and will be immediately removed from the VIP Verification database. An applicant removed pursuant to this section may appeal the decision to OHA in accordance with section 74.13 of this part. The date of a new determination letter verifying an applicant will be the beginning of the next 3-year eligibility period.

**12.** Revise § 74.15 to read as follows:

**§ 74.15 What length of time may a business participate in VIP Verification Program?**

- (a) A participant receives an eligibility term of 3 years from the date of CVE's approval letter establishing verified status.
- (b) The participant must maintain its eligibility during its tenure and must inform CVE of any changes that would affect its eligibility within 30 days.
- (c) The eligibility term may be shortened by removal pursuant to § 74.2 of this part, application pursuant to § 74.14(b) of this part, voluntary withdrawal by the participant pursuant to § 74.21 of this part, or cancellation pursuant to § 74.22 of this part.
- (d) CVE may initiate a verification examination whenever it receives credible information concerning a participant's eligibility as a VOSB. Upon its completion of the examination, CVE will issue a written decision regarding the continued eligibility status of the questioned participant.
- (e) If CVE finds that the participant does not qualify as a VOSB, the procedures at § 74.22 of this part will apply, except as provided in § 74.2 of this part.
- (f) If CVE finds that the participant continues to qualify as a VOSB, the original eligibility period remains in effect.

**13.** Revise § 74.20 to read as follows:

**§ 74.20 What is a verification examination and what will CVE examine?**

- (a) *General.* A verification examination is an investigation by CVE officials, which verifies the accuracy of any statement or information provided as part of the VIP Verification application process. Thus, examiners may verify that the concern currently meets the eligibility requirements, and that it met such requirements at the time of its application or its most recent size recertification. An examination may be conducted on a random, unannounced basis, or upon receipt of specific and credible information alleging that a participant no longer meets eligibility requirements.
- (b) *Scope of examination.* CVE may conduct the examination at one or all of the participant's offices or work sites. CVE will determine the location(s) of the examination. CVE may review any information related to the concern's eligibility requirements including, but not limited to, documentation related to the legal structure, ownership, and control. Examiners may review any or all of the organizing documents, financial documents, and publicly available information as well as any information identified in § 74.12 of this part.

**14.** Revise § 74.21 to read as follows:

**§ 74.21 What are the ways a business may exit VIP Verification Program status?**

A participant may:

(a) Voluntarily cancel its status by submitting a written request to CVE requesting that the concern be removed from public listing in the VIP database; or

(b) Delete its record entirely from the VIP database; or

(c) CVE may remove a participant immediately pursuant to § 74.2; or

(d) CVE may remove a participant from public listing in the VIP database for good cause upon formal notice to the participant in accordance with § 74.22. Examples of good cause include, but are not limited to, the following:

(1) Submission of false information in the participant's VIP Verification application.

(2) Failure by the participant to maintain its eligibility for program participation.

(3) Failure by the participant for any reason, including the death of an individual upon whom eligibility was based, to maintain ownership, management, and control by veterans, service-disabled veterans, or surviving spouses.

(4) Failure by the concern to disclose to CVE the extent to which non-veteran persons or firms participate in the management of the participant.

(5) Failure to make required submissions or responses to CVE or its agents, including a failure to make  available financial statements, requested tax returns, reports, information requested by CVE or VA's Office of Inspector General, or other requested information or data within 30 days of the date of request.

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(6) Cessation of the participant's business operations.

(7) Failure by the concern to provide an updated VA Form 0877 within 30 days of any change in ownership, except as provided in paragraph 74.3(f)(3) of this part.

(8) Failure to inform CVE of any such changed circumstances, as outlined in paragraphs (c) and (d) of this section.

(9) Failure by the concern to obtain and keep current any and all required permits, licenses, and charters, including suspension or revocation of any professional license required to operate the business.

(e) The examples of good cause listed in paragraph (c) of this section are intended to be illustrative only. Other grounds for canceling a participant's verified status include any other cause of so serious or compelling a nature that it affects the present responsibility of the participant.

**15.** Amend § 74.22 by revising paragraphs (a) and (e) to read as follows:

**§ 74.22**            **What are the procedures for cancellation?**

(a) *General.* When CVE believes that a participant's verified status should be cancelled prior to the expiration of its eligibility term, CVE will notify the participant in writing. The Notice of Proposed Cancellation Letter will set forth the specific facts and reasons for CVE's findings and will notify the participant that it has 30 days from the date CVE sent the notice to submit a written response to CVE explaining why the proposed ground(s) should not justify cancellation.

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(e) *Appeals.* A participant may file an appeal with OHA concerning the Notice of Verified Status Cancellation decision in accordance with 13 CFR part 134 (/select-citation/2018/01/10/13-CFR-134). The decision on the appeal shall be final.

**16.** Revise § 74.25 to read as follows:

**§ 74.25                      What types of personally identifiable information will VA collect?**

In order to establish owner eligibility, VA will collect individual names and social security numbers for veterans, service-disabled veterans, and surviving spouses who represent themselves as having ownership interests in a specific business seeking to obtain verified status.

**17.** Revise § 74.26 to read as follows:

**§ 74.26                      What types of business information will VA collect?**

VA will examine a variety of business records. See § 74.12, "What must a concern submit to apply for VIP Verification Program?"

**18.** Revise § 74.27 to read as follows:

**§ 74.27                      How will VA store information?**

VA stores records provided to CVE fully electronically on the VA's secure servers. CVE personnel will compare information provided concerning owners against any available records. Any records collected in association with the VIP verification program will be stored and fully secured in accordance with all VA records management procedures. Any data breaches will be addressed in accordance with the VA information security program.

(Authority: 38 U.S.C. 501 (<https://api.fdsys.gov/link?collection=uscode&title=38&year=mostrecent&section=501&type=usc&link-type=html>) and 8127)

**19.** Revise § 74.28 to read as follows:

**§ 74.28                      Who may examine records?**

Personnel from VA, CVE, and its agents, including personnel from the SBA, may examine records to ascertain the ownership and control of the applicant or participant.

(Authority: 38 U.S.C. 5 (<https://api.fdsys.gov/link?collection=uscode&title=38&year=mostrecent&section=5&type=usc&link-type=html>), 13, and 8127)

**20.** Revise section 74.29 to read as follows:

**§ 74.29                      When will VA dispose of records?**

The records, including those pertaining to businesses not determined to be eligible for the program, will be kept intact and in good condition and retained in accordance with VA records management procedures following a program examination or the date of the last Notice of Verified Status Approval letter. Longer retention will not be required unless a written request is received from the Government Accountability Office not later than 30 days prior to the end of the retention period.

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